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NO. 81-2152

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

IRWIN WASSERMAN, et al.,
Petitioners,

v.

SYLVIA WASSERMAN,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

MEMORANDUM IN RESPONSE TO PETITION FOR CERTIORARI

JOHN HENRY LEWIN, JR.
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Attorneys for Respondents,
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Irwin H. Liptz

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

IRWIN WASSERMAN, et al.,
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v.

SYLVIA WASSERMAN,
Respondent

MEMORANDUM OF MURRAY A. KIVITZ AND IRWIN H. LIPTZ IN RESPONSE TO PETITION FOR CERTIORARI

Respondents, Murray A. Kivitz and Irwin H. Liptz,* adopt, for purposes of this

*The parties to the proceeding before the Fourth Circuit were Sylvia Wasserman, Appellant, and Irwin Wasserman, Arlene Cornblatt Wasserman, Jacob Wasserman, Helen Ann Wasserman, Murray A. Kivitz, Irwin H. Liptz and Armand Robinson, Appellees. Murray A. Kivitz and Irwin H. Liptz are Respondents to the proceeding in this Court. Supreme Court Rule 19.6.

Memorandum, the following sections of the Petition for Certiorari: "Questions Presented," "Table of Authorities," "Opinions Below," "Jurisdiction" and "Statement of the Case."

ARGUMENT

The Petition for Certiorari should be granted in order to settle the present confusion in the circuits regarding the application of the "domestic relations" exception to the subject matter jurisdiction of the federal courts. (See Petition at 10-12). The Fourth Circuit, by attempting to distinguish certain domestic matters from others, labelling some intentional torts as torts not arising directly from the marital relationship, has confused what was a well settled area of the law and has put itself in conflict with the other circuits. For example, in an almost identical situation, the Southern District of New York dismissed for lack of

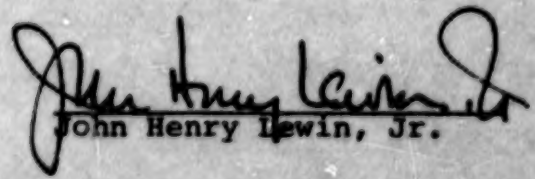
subject matter jurisdiction a complaint alleging false imprisonment and breach of a property and custody agreement since "the dispute between the parties, no matter how labelled, [was] essentially one arising with respect to . . . incidents of a matrimonial dispute." Kilduff v. Kilduff, 473 F.Supp. 873, 874 (S.D. N.Y. 1979) (emphasis added). See Jagiella v. Jagiella, 647 F.2d 561, 565 (5th Cir. 1981) (claims for alienation of affection and intentional infliction of mental anguish "[grew] out of the dissolved but still stormy relationship of the parties"); Sutter v. Pitts, 639 F.2d 842, 844, (1st Cir. 1981), quoting, Hernstadt v. Hernstadt, 373 F.2d 316, 318 (2d Cir. 1967), (civil rights action amounted to "nothing more than an 'attempt to embroil the federal courts in matrimonial matters best left to the states'"); Bacon v. Bacon, 365 F.Supp. 1019 (D. Ore. 1973) (action for intentional

infliction of mental anguish was actually a domestic relations case). Accordingly, Respondents agree that certiorari should be granted so that the question presented by the Petition may be authoritatively resolved.

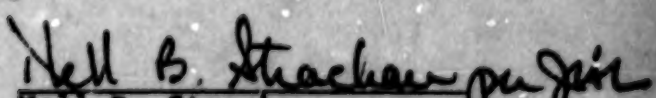
CONCLUSION

For the foregoing reasons, Respondents support the position of Petitioners and urge that the Writ of Certiorari be issued.

Respectfully submitted,



John Henry Lewin, Jr.



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